

Watt v McDermott

2024 NY Slip Op 34375(U)

December 9, 2024

Supreme Court, Kings County

Docket Number: Index No. 525464/2018

Judge: Larry D. Martin

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
PART COMM 10**

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JASON WATT and WATT PICTURES, LLC,
Plaintiff(s)

Index: 525464/2018

-against-

DECISION/ORDER

EUGENE MCDERMOTT and BLACKFIN, INC
Defendant(s)

-----X
The Following E-Filed Papers Read
Herein:

NYSCEF Docs Numbered

MS8
MS9

276, 279, 283, 295 303, 309, 324,
336, 363

Plaintiff Jason Watt and his company Watt Pictures, LLC (collectively “Watt” or “plaintiffs”) bring this action for, inter alia, breach of contract, breach of oral contract, tortious interference with economic advantage, breach of fiduciary duty, and quantum meruit against defendants Eugene McDermott (“McDermott”) and Blackfin, Inc. (“Blackfin,” collectively “defendants”). Defendants move pursuant to CPLR 3212 for summary judgment dismissing all of plaintiff’s claims (MS8). Plaintiff cross-moves for partial summary judgment (MS9).

Background

The parties to the lawsuit are producers who operate their respective production companies developing television shows for various entertainment networks. On October 25, 2016, Blackfin entered into a development services agreement with A&E Television Networks, LLC (“History Channel” or “History”) wherein Blackfin would deliver development materials to the History Channel regarding a gun themed verité style television series. See NYSEF Doc No. 303. The History Channel was seeking to air a show wherein the cast are owners of a gun

business who build unique firearms. For the first stage of development, Blackfin would provide History with eight to ten video “SKYPE” casting interviews of potential gun personalities/expert “duos” as well as written outlines or concepts in exchange for \$10,000. In turn, on October 27, 2016, McDermott sent Watt an email offering \$8,000 for the delivery to Blackfin the eight to ten casting SKYPES requested by the History Channel (the remaining \$2,000 was offered to a non-party casting director). McDermott also offered Watt 30% of the show’s overall production fee if the History Channel picks the cast delivered by Watt and orders the series. See NYSEF Doc. 276. Watt accepts the offer and was given access to Blackfin offices before setting out to locate cast members. See NYSEF Doc 309.

While the parties were in the first stage of developing the series, they worked in a collaborative manner. Watt located prospective cast members who were employees and associates with the Black Rifle Coffee Company (“Black Rifle”) in Salt Lake City, Utah. The Black Rifle group consists of Mat Best, Black Rifle co-founder; Evan Hafer, Jared Taylor, Vincent “Rocco” Vargas (“Rocco”)¹, and Vaughn “Manspot” Neville (“Neville” or “Manspot”), an associate of Black Rifle. Blackfin arranged and funded Watt’s travel for an initial meeting with them sometime in mid-November 2016. Using Blackfin’s equipment, Watt filmed interviews with the Black Rifle group (excluding Rocco) and tours their offices and compound. The footage and other casting materials were submitted to History and History expressed an interest in the Black Rifle group due to their brand recognition and social media presence. More specifically, History wanted the parties to focus on Mat Best and Vaughn Neville. See NYSEF Doc 324.

¹ It is unclear whether Vincent “Rocco” Vargas is an employee or associate of Black Rifle Coffee Company.

Throughout the initial casting phase, both Watt and Blackfin were in direct communication with History, delivering gun build ideas as well as SKYPES, pitch decks, and treatments² of the Black Rifle group. History's interest in the Black Rifle group prompts it to order a sizzle reel, a three-to-five-minute non-broadcast presentation tape demonstrating the concept and style of the show. However, on December 14th and 15th, 2016, Jared Taylor sent the parties emails on behalf of Black Rifle (excluding Neville), informing Watt and Blackfin of Black Rifle's withdrawal from participation in the show. See NYSEF Doc 279. Black Rifle's withdrawal from casting prompted the parties to film a new two-shot interview sizzle reel with Rocco, Neville, and their respective wives. See NYSEF Doc 336.

Following the filming of the sizzle reel, the parties experienced another casting setback when History performed a social media background check completed January 23, 2017, and discovered that Neville's social media contained offensive content. See NYSEF Doc 283. On February 9, 2017, History and Blackfin form a second development services agreement wherein History pays Blackfin \$12,500 to find a new cast within fifteen days. See NYSCEF Doc 284. Eventually, History is satisfied with the new casting submissions and they order a series titled "Brothers in Arms" featuring Rocco, Eli Cuevas, Mike Davis, and Zac Merkley. See NYSCEF Doc 363, p50, 65-66.

Discussion

"On a summary judgment motion, courts determine whether triable issues of fact exist or whether a party can be granted judgment as a matter of law on the proof submitted (see *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). Movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any

² A "pitch deck" and "treatment" are written submissions to a network that pitch an idea or cast members to an entertainment network. See NYSEF Doc 363 p55 lines 7-22.

material issue of fact (see *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Only when movant presents a prima facie case does the burden shift to the nonmoving party to produce evidentiary proof in admissible form sufficiently establishing the existence of a material factual issue (see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Further, the party opposing summary judgment is entitled to the benefit of every favorable inference that may be drawn from the pleadings, affidavits, and competing contentions of the parties (see *Sayed v Aviles*, 72 AD3d 1061, 1062 [2d Dept 2010]; see also *Nicklas v Tedlen Realty Corp.*, 305 AD2d 385, 386 [2d Dept 2003], citing *Myers v Fir Cab Corp.*, 64 NY2d 806, 808 [1985]). Accordingly, issue-finding rather than issue-determination is the key in deciding a summary judgment motion (see *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, [1957], rearg denied 3 NY2d 941 [1957]). The court's function on a summary judgment motion is to determine whether material factual issues exist, not resolve such issues" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2010] [internal quotation marks omitted]).

"The essential elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff's performance pursuant to the contract, (3) the defendant's breach of its contractual obligations, and (4) damages resulting from the breach" *Kollatz v. KOS Bldg. Group, LLC* 188 A.D.3d 1175, 1178 [2nd Dept. 2020]). The parties' respective motions for summary judgment regarding the breach of contract claims and their derivatives must be denied. Issues of fact remain throughout the entirety of agreement that is before the court.

The parties dispute the terms of the contract and whether performance was tendered thereunder. The original email agreement between Blackfin and Watt set out brief terms consisting of the delivery of eight to ten SKYPE duos within a working period between October

31, 2016, to November 30, 2016, as well as a bonus if History picks a cast derived from Watt's submissions. See NYSCEF Doc 276. However, the record contains written casting materials containing details of potential gun personalities/experts, who were not filmed in any SKYPES, that were used to pitch a cast for the show in addition to the agreed upon SKYPES. The contract neither permits nor prohibits the submission of written treatments or other materials, such as a brief list of potential cast members, in lieu of the SKYPES and may have evolved to include them. *Id.* At this juncture, there is insufficient evidence regarding this issue to enable the court to make a ruling in favor of either party.

Furthermore, the contract is also unclear whether Watt is entitled to the bonus solely if History picks a specific duo from the submitted SKYPES, or from any combination of prospective cast members selected from the entirety of Watt's submissions, SKYPES or otherwise. The parties also dispute whether the cast members eventually featured in the show can be attributed to Watt's casting efforts, Blackfin's efforts, or Rocco's recommendation. Watt became aware of Rocco and Eli Cuevas when he discovered the Black Rifle group and, in turn, Blackfin and History became aware of the duo through Black Rifle. However, Watt states in his deposition that he cannot remember if he sent a SKYPE of Rocco to Blackfin, and that Rocco provided videos of Eli Cuevas to Blackfin. See NYSCEF Doc 295 p137 line 5-8 and p240 line 2-18. It is unclear to the court whether Watt ever filmed Rocco and Eli Cuevas for a SKYPE during the agreed upon working period. See NYSCEF Doc 285, NYSCEF Doc 310 p50, and NYSCEF Doc 336. The brevity of the October 2016 agreement and the evidentiary record does not provide the court enough evidence to definitively foreclose any dispute of material fact permitting the court to make a determination on this issue.

Aside from the blackletter of the initial October 2016 email agreement, the parties submitted evidence that indicates the terms of the contract were continuously modified throughout the course of the parties' casting efforts. In a November 13, 2016, text message exchange, McDermott appears to be giving Watt instructions on how to pitch "biz deal points" to History³ and mentions a "60/40 split between [Watt and Blackfin]." See NYSCEF Doc 318. Watt maintains that the "60/40 split" is a modification of the 30 percent bonus originally offered in the October 27, 2016, email agreement between the parties. However, the surrounding text messages discuss negotiations for the distribution of revenue derived from potential merchandising of the show that would be split among Blackfin, Watt, History, and the cast. *Id.* The court is unable to determine based on the text messages if the "60/40 split" is in reference to a separate arrangement regarding merchandising of the show or a modification of the original agreement. The ambiguity of the terms of the agreement between the parties is further obscured by Blackfin's subsequent payment of \$4,000 to Watt for assistance in filming the original sizzle reel featuring Rocco and Neville. See NYSCEF Doc 281, 282, 329, and 337. The court is unable to discern whether the subsequent offers/payments are in reference to modifications of the October 2016 agreement or separate, consecutive agreements for follow-up production services.

Watt additionally alleges that Blackfin's breach of contract constituted tortious interference with economic advantage. Over a series of communications through email and Google Hangouts, a variety of messaging service, dated January 17, 2017, McDermott expresses dissatisfaction with Watt's inattentiveness to the development of the gun show when Watt states that he cannot compile a list of gun build ideas for the show because he is "slammed" with skypes and meetings. McDermott subsequently terminates Watt's involvement in the show. See

³ There is no explicit mention of a television network within this text message exchange, however, from the context, the parties are referring to the History Channel.

NYSCEF Doc 287 and 345. Watt argues that his termination from development of the show interfered with future business opportunities with History and the cast of the show. "To establish a claim of tortious interference with prospective economic advantage, a plaintiff must demonstrate that the defendant's interference with its prospective business relations was accomplished by wrongful means or that [the] defendant acted for the sole purpose of harming the plaintiff." *Tsatskin v. kordonsky* (189 A.D.3d 1296, 1298 [2nd Dept 2020]) "As a general rule, such wrongful conduct must amount to a crime or an independent tort, and may consist of 'physical violence, fraud or misrepresentation, civil suits and criminal prosecutions.'" *Id.* Watt claims that Blackfin informed History that Watt is no longer involved with the show and that this representation led to Watt being excluded from side deals, merchandising, and business opportunities with the cast and History. However, these contentions do not give rise to tortious conduct on behalf of the defendants and therefore relief cannot be afforded under a tortious interference cause of action. McDermott's termination of Watt's involvement of the show only gives rise to a claim for breach of contract. "[A] simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated This legal duty must spring from circumstances extraneous to, and not constituting elements of, the contract, although it may be connected with and dependent upon the contract" *Kollatz v. KOS Bldg. Group, LLC* at 1178. Thus, plaintiff's claims for tortious interference with economic advantage are dismissed.

Watt also makes a claim against defendants for breach of fiduciary duty. "[T]he elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct." *Palmetto Partners, L.P. v. AJW Qualified Partners, LLC* (83 A.D.3d

804 [2nd Dept 2011]). “A cause of action sounding in breach of fiduciary duty must be pleaded with the particularity required by CPLR 3016 (b).” *Id.* “A conventional business relationship, without more, is insufficient to create a fiduciary relationship. Rather, a plaintiff must show special circumstances that transformed the parties' business relationship to a fiduciary one.” *Legend Autorama, Ltd. v Audi of Am., Inc.* (100 A.D.3d 714, 717 [2nd Dept 2012]). Special circumstances “such as control by one party of the other for the good of the other” give rise to a fiduciary relationship. *Saul v. Cahan* (153 A.D.3d 947, 949 [2nd Dept 2017]). “A fiduciary relationship may exist when one party reposes confidence in another and reasonably relies on the other's superior expertise or knowledge, but not in an arm's-length business transaction involving sophisticated business people” *Id.*

Watt's complaint states that a fiduciary relationship was created between the parties through their collaboration in competing against other production companies in pitching a cast to History. The allegations in Watt's complaint, nor the evidentiary record support a finding for a fiduciary relationship. McDermott contracted with Watt for casting services, a business transaction between two parties who participate in the same line of business. McDermott was not in control of Watt for the good of Watt – no part of the transaction created a relationship of confidence and expertise for Watt's benefit. Consequently, Watt's claim for breach of fiduciary duty is also dismissed.

Conclusion

Accordingly, Defendants' motion for summary judgement (MS8) is granted in part dismissing the claims against it for tortious interference economic advantage and breach of fiduciary duty. Summary judgement seeking dismissal of the breach of contract claims is denied. Likewise, plaintiffs' motion for partial summary judgement (MS9) is also denied.

This constitutes the decision and order of the court.

Dated: 12/19/2024


HON. LARRY D. MARTIN J.S.C.

**HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT**